



Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1609

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

PART I: GENERAL INFORMATION

Requestor Name and Address: DOLLY VINSANT MEMORIAL HOSPITAL 302 KINGS HWY STE 112 BROWNSVILLE TX 78521-4224	MFDR Tracking #: M4-05-8970-01 DWC Claim #: Injured Employee:
Respondent Name and Box #: LIBERTY MUTUAL FIRE INSURANCE Box #: 28	Date of Injury: Employer Name: Insurance Carrier #:

PART II: REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The billing in dispute has not been paid at a fair and reasonable rate in accordance with TWCC guidelines, policies, rules and the Texas Labor Code... In MDR: M4-04-1813-01, the Division ruled that evidence of redacted copies of payments made by the other carriers for similar treatment in the same geographical area was a proper method to determine the fair and reasonable rates."

Amount in Dispute: \$11,213.23

PART III: RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The bill has been reviewed per Rule 133.301 and the fee schedule guidelines, which allow for line audit. Reductions may reflect fair and reasonable pricing, denial of personal items, non-compensable services, and/or services not normally billed.... Additional reductions, based upon usual and customary charges in the providers geographical area, have also been applied. These reductions were based upon review by Cor Vel Medcheck Select. The MedCheck Select report of adjusted charges is attached... Liberty Mutual does not believe that Dolly Vinsant Memorial Hospital is due any further reimbursement for services rendered..."

PART IV: SUMMARY OF FINDINGS

Date(s) of Service	Denial Code(s)	Disputed Service	Amount in Dispute	Amount Due
5/25/2004	F, K, X070, B417	Outpatient Surgery	\$11,213.23	\$0.00
Total Due:				\$0.0

PART V: REVIEW OF SUMMARY, METHODOLOGY AND EXPLANATION

Texas Labor Code §413.011(a-d), titled *Reimbursement Policies and Guidelines*, and Division rule at 28 Texas Administrative Code §134.1, titled *Use of the Fee Guidelines*, effective May 16, 2002 set out the reimbursement guidelines.

This request for medical fee dispute resolution was received by the Division on May 5, 2005. Pursuant to Division rule at 28 TAC §133.307(g)(3), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, the Division notified the requestor on June 13, 2005 to send additional documentation relevant to the fee dispute as set forth in the rule.

1. The insurance carrier issued additional payment to the requestor in an EOB dated 5/17/2005. The respondent submitted a copy of the EOB in the response packet. Per Division rule at 28 TAC §133.307(j)(2) effective January 2, 2002, 26 TexReg 10934; amended to be effective January 1, 2003, 27 TexReg 12282, the response shall address only those denial reasons presented to the requestor prior to the date the request for medical dispute resolution was filed with the division and the other party. Responses shall not address new or additional denial reasons or defenses after the filing of a request. Any new denial reasons or defenses raised shall not be considered in the review. Review of the submitted documentation finds that the additional payment EOB was issued to the requestor on May 17, 2005, after the requestor had filed a request for medical dispute resolution with the Division on May 5, 2005. Any new denial reasons or defenses raised in the response packet or the EOB dated May 17, 2005, shall not be considered in this review.

2. The insurance carrier issued additional payment to the requestor after the filing of the request for medical fee dispute resolution. In response, the requestor has submitted a revised *Table of Disputed Services*, received by the Division on June 27, 2005. This review will be conducted based on the disputed services as listed in the revised table.
3. For the services involved in this dispute, the respondent reduced or denied payment with reason codes:
 - F - Fee guideline MAR reduction
 - K - Not appropriate HCP
 - X070 – LETTER TO FOLLOW. (X070)
 - B417 – SERVICE IS DENIED, IT DOES NOT FALL WITHIN THE SCOPE OF THE PROVIDERS PRACTICE. (B417)

The carrier denied disputed services with reason codes K “Not appropriate HCP” and B417 “SERVICE IS DENIED, IT DOES NOT FALL WITHIN THE SCOPE OF THE PROVIDERS PRACTICE. (B417).” The carrier did not submit documentation to support these denial codes and did not maintain this denial reason upon reconsideration. The Division concludes that these denial reasons are not supported. The disputed services will therefore be reviewed per applicable statutes and Division rules.

4. This dispute relates to outpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 TAC §134.1, effective May 16, 2002, 27 TexReg 4047, which requires that “Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers’ Compensation Act, §413.011 until such period that specific fee guidelines are established by the commission.”
5. Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.
6. Division rule at 28 TAC §133.307(g)(3)(B), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to send additional documentation relevant to the fee dispute including “a copy of any pertinent medical records.” Review of the documentation submitted by the requestor finds that the requestor has not provided copies of all medical records pertinent to the services in dispute. The requestor submitted a copy of the operative report; however, the requestor did not submit a copy of the anesthesia record, nursing notes, radiology reports, EKG report or other medical records sufficient to support the services in dispute. The Division concludes that the requestor has not met the requirements of Division rule at 28 TAC §133.307(g)(3)(B).
7. Division rule at 28 TAC §133.307(g)(3)(C)(iv), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to send additional documentation relevant to the fee dispute including a statement of the disputed issue(s) that shall include “how the submitted documentation supports the requestor position for each disputed fee issue.” Review of the submitted documentation finds that the requestor did not state how the submitted documentation supports the requestor’s position for each disputed fee issue. The Division concludes that the requestor has not met the requirements of Division rule at 28 TAC §133.307(g)(3)(C)(iv).
8. Division rule at 28 TAC §133.307(g)(3)(D), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.” Review of the submitted documentation finds that:
 - The requestor’s position statement states that “In support of our position, Dolly Vinsant has previously submitted copies of redacted EOP’s from Liberty Mutual Insurance, and from other carriers. These EOP’s and EOB’s establish and reflect what Liberty Mutual and these other carriers have agreed is a fair and reasonable reimbursement for similar medical services performed in this locality and geographical area.”
 - In support of the requested reimbursement, the requestor submitted redacted EOBs which the requestor asserts are for similar medical services performed in the same locality and geographical area. However, the requestor did not discuss or explain how the sample EOBs support the requestor’s position that additional payment is due. Review of the submitted documentation finds that the requestor did not establish that the sample EOBs are for services that are substantially similar to the services in dispute. The redacted EOBs indicate that payment was reduced based on the insurance carriers’ fair and reasonable reimbursement methodology; however, the carriers’ fair and reasonable reimbursement methodologies are not described on the EOBs. Nor did the requestor explain or discuss the sample carriers’ methodologies or how the payment amount was determined for each sample EOB. The requestor did not discuss whether such payment was typical for such services or for the services in dispute.
 - The requestor does not discuss or explain how payment of the requested amount would ensure the quality of medical care, achieve effective medical cost control, provide for payment that is not in excess of a fee charged for similar treatment of an injured individual of an equivalent standard of living, consider the increased security of payment, or otherwise satisfy the requirements of Texas Labor Code §413.011(d) or Division rule at 28 TAC §134.1.

- The requestor has not articulated a methodology under which fair and reasonable reimbursement should be calculated.
- The Division has previously found that a reimbursement methodology based upon payment of a hospital's billed charges, or a percentage of billed charges, does not produce an acceptable payment amount. This methodology was considered and rejected by the Division in the *Acute Care Inpatient Hospital Fee Guideline* adoption preamble which states at 22 Texas Register 6276 (July 4, 1997) that:

"A discount from billed charges was another method of reimbursement which was considered. Again, this method was found unacceptable because it leaves the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs, would be administratively burdensome for the Commission and system participants, and would require additional Commission resources."

- The Division has previously found that a reimbursement methodology based on hospital costs does not produce a fair and reasonable reimbursement amount. This methodology was considered and rejected by the Division in the *Acute Care Inpatient Hospital Fee Guideline* adoption preamble which states at 22 Texas Register 6276 (July 4, 1997) that:

"The Commission [now the Division] chose not to adopt a cost-based reimbursement methodology. The cost calculation on which cost-based models... are derived typically use hospital charges as a basis. Each hospital determines its own charges. In addition, a hospital's charges cannot be verified as a valid indicator of its costs... Therefore, under a so-called cost-based system a hospital can independently affect its reimbursement without its costs being verified. The cost-based methodology is therefore questionable and difficult to utilize considering the statutory objective of achieving effective medical cost control and the standard not to pay more than for similar treatment to an injured individual of an equivalent standard of living contained in Texas Labor Code §413.011. There is little incentive in this type of cost-based methodology for hospitals to contain medical costs."

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

9. The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under Division rules at 28 Texas Administrative Code §133.307(g)(3)(B), §133.307(g)(3)(C), and §133.307(g)(3)(D). The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

PART VI: GENERAL PAYMENT POLICIES/REFERENCES

Texas Labor Code §413.011(a-d), §413.031 and §413.0311
 28 Texas Administrative Code §133.307, §134.1
 Texas Government Code, Chapter 2001, Subchapter G

PART VII: DIVISION DECISION

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is not entitled to additional reimbursement for the services involved in this dispute.

DECISION:

<hr/> Authorized Signature	Grayson Richardson <hr/> Medical Fee Dispute Resolution Officer	9/17/2010 <hr/> Date
<hr/> Authorized Signature	<hr/> Medical Fee Dispute Resolution Manager	<hr/> Date

PART VIII: YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **20** (twenty) days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with other required information specified in Division rule at 28 TAC §148.3(c).

Under Texas Labor Code §413.0311, your appeal will be handled by a Division hearing under Title 28 Texas Administrative Code Chapter 142 Rules if the total amount sought does not exceed \$2,000. If the total amount sought exceeds \$2,000, a hearing will be conducted by the State Office of Administrative Hearings under Texas Labor Code §413.031.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.